

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown &

14 Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF FRANK G. COLBY

23 Volume II, Pages 179 - 254

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1 (The following is the continued deposition
2 of FRANK G. COLBY, taken pursuant to Notice of Taking
3 Deposition, at the offices of Dorsey & Whitney, 250
4 Park Avenue, New York, New York, commencing at
5 approximately 10:00 o'clock a.m., December 18, 1997.)

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1 P R O C E E D I N G S

2 (Witness previously sworn.)

3 FRANK G. COLBY

4 called as a witness, being previously
5 sworn, was examined and testified
6 as follows:

7 ADVERSE EXAMINATION (cont'd)

8 MR. O'FALLON:

9 Q. Good morning, Dr. Colby.

10 A. Good morning.

11 Q. Are you ready to start?

12 A. One moment, please.

13 Okay.

14 Q. Okay. You're looking at Plaintiffs' Exhibit
15 4875, a document that's been Bates stamp numbered
16 504362367 through 2371, and you've had a chance to
17 look at that document now; correct?

18 A. Correct.

19 Q. This appears to be a transcription of a
20 presentation you gave; correct?

21 A. Correct.

22 Q. It was transcribed by someone named Karin Snow;
23 correct?

24 A. My secretary.

25 MR. PLESEC: Objection.

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- 1 Q. Okay. Karin Snow was your secretary --
- 2 A. She was my secretary at the time, yes.
- 3 Q. Okay. Do you recall this presentation?
- 4 A. Pardon me?
- 5 Q. Do you recall making this presentation?
- 6 A. Correct.
- 7 Q. Okay. And this was made in May of 1982;
- 8 correct?
- 9 A. Correct. That's what it says.
- 10 Q. Are there more tapes of this conver -- of this
- 11 presentation?
- 12 A. More what?
- 13 Q. You'll see that this is just a partial
- 14 transcript.
- 15 A. I don't remember.
- 16 Q. Okay. This was a presentation you gave at the
- 17 R&D strategic planning conference; correct?
- 18 A. Of Reynolds Tobacco Company, yes.
- 19 Q. So this is a presentation you gave to other
- 20 Reynolds Tobacco Company employees; correct?
- 21 A. Correct.
- 22 Q. And what you're doing here is talking about some
- 23 work that your group is doing; correct?
- 24 A. That is correct.
- 25 Q. Okay. Let's go to the first page of the

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1 document where it talks about external pressures.

2 Okay?

3 A. Uh-huh.

4 Q. You state here that "External pressures which
5 will have a negative impact on growth and continue to
6 be applied against the Tobacco Industry," and then
7 you talk about "Areas of major concern, are the
8 'Social Acceptability of Smoking', and the 'Smoking
9 and Health Issue'...;" correct?

10 A. That's properly what it says, yes.

11 Q. And the smoking and health issue is the whole
12 issue of whether or not smoking causes disease;
13 correct?

14 MR. PLESEC: Objection.

15 A. That's the basic content, yes.

16 Q. Okay. And you're talking about smoking and
17 health because it is something which will adversely
18 affect the marketing of your products; correct?

19 MR. PLESEC: Objection.

20 A. I have to --

21 Tell me the line and place where that is
22 particularly.

23 Q. Let's go on the first page again. It's on the
24 first page --

25 A. I'm sorry.

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1 Q. -- again, sir, and let's just read along
2 starting with your first sentence under
3 "Presentation."

4 A. Yeah, uh-huh.

5 Q. It says, "External pressures which will have a
6 negative impact on growth and continue to be applied
7 against the Tobacco Industry. Areas of major
8 concern, are the 'Social Acceptability of Smoking',
9 the 'Smoking and Health Issue' for both the smoker
10 and the non-smoker, Legislative and Regulatory
11 activities which adversely affect the marketing of
12 our products, and efforts at all levels of Government
13 to increase cigarette taxes;" correct?

14 A. That's what it -- what it says, yes.

15 Q. You then state, quote, "All of these factors
16 taken individually, or in concert, will impact
17 negatively on cigarette consumption;" correct?

18 A. That's the sentence, correct.

19 Q. Okay. So one of the reasons that R. J. Reynolds
20 was out in the public telling the public that it
21 hadn't been proven that cigarette smoking caused
22 disease was that you wanted to sell as many
23 cigarettes as possible; correct?

24 MR. PLESEC: Objection.

25 A. No.

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1 Q. And in fact, it was important that you keep
2 denying the causal relationship because these issues
3 impacted negatively on cigarette consumption;
4 correct?

5 MR. PLESEC: Objection.

6 A. No.

7 Q. And that's why you state in the next sentence,
8 "And the objective is to aggressively counter
9 external pressures on the Tobacco Industry, so as to
10 minimize their effects on the achievement of Reynolds
11 Tobacco Company's mission, and capitalize on
12 'External Issues', which can enhance the Company's
13 position." Correct?

14 A. That's what the sentence says.

15 Q. And that's a statement that you made to the
16 other people at R. J. Reynolds; correct?

17 A. According to the memo, the answer is yes.

18 Q. And you have no reason to believe that this
19 transcript is incorrect; is that true?

20 A. That is true.

21 Q. Now after this time -- this is 1982. In 1983
22 you move your position to basically work in
23 association with one of Reynolds' law firms; correct?

24 A. I had association, close quotes, with other law
25 firms before that also.

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1 Q. Right. But what I'm talking about is at some
2 point you physically leave Winston-Salem and go to
3 work in an association with Jacob Menninger; correct?

4 A. Oh, I see. Sorry. All right.

5 Q. Okay.

6 A. You mean physical location, yes.

7 Q. Right. And from about, what was it, 1983 until
8 today, you continue to work in association with law
9 firms that represent R. J. Reynolds; correct?

10 A. Different types of association, yes.

11 Q. But throughout this time period you basically
12 have been paid by R. J. Reynolds; correct?

13 MR. PLESEC: Objection.

14 A. No.

15 Q. Well that is, they ultimately are the people who
16 pay for your time; right?

17 MR. PLESEC: Objection.

18 A. That is correct.

19 Q. Okay. So even though you're working in
20 different associations, the ultimate party that's
21 paying for your work --

22 A. Uh-huh.

23 Q. -- is R. J. Reynolds Tobacco; correct?

24 MR. PLESEC: Objection.

25 A. As far as I know, the answer is yes.

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1 Q. Okay. Now at some point in about 1984, R. J.
2 Reynolds decided to undertake a public-relations
3 campaign to basically get out this message that it
4 wasn't proven that smoking caused disease; correct?

5 MR. PLESEC: Objection.

6 A. It -- it propogated or --
7 It communicated something which is correct,
8 in -- in my judgment.

9 Q. But what -- what R. J. Reynolds did was it took
10 out some advertisements in magazines and other media;
11 correct?

12 MR. PLESEC: Objection.

13 A. I don't know the details, but that was part of
14 it.

15 Q. Yeah. And for instance, the chairman of the
16 corporation, Mr. Horrigan, was on TV on Nightline.
17 Do you remember that?

18 A. Vaguely. But he changed position and went with
19 another company later on.

20 Q. Right. But when he was on the TV, he was with
21 R. J. Reynolds Tobacco; right?

22 A. I don't remember that particular instance, but
23 it is probably true. But I don't remember that
24 specific, I do not remember either way.

25 Q. So for the entire time --

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1 You've basically been with the industry for the
2 last 46 years; correct?

3 MR. PLESEC: Objection.

4 A. You said "46" or "four to six?"

5 Q. Forty-six.

6 A. Since nineteen fifty -- '51, yes.

7 Q. Right.

8 A. Right.

9 Q. So you've been actively working for the industry
10 for the last 46 years; correct?

11 MR. PLESEC: Objection.

12 A. Since 1951, yes.

13 Q. Okay. And during that entire time, your
14 employer, R. J. Reynolds, and the tobacco industry,
15 has publicly stated that smoking has not been proven
16 to cause disease; correct?

17 MR. PLESEC: Objection.

18 A. Basically the answer is to -- in part, but also
19 I've said -- I've articulated the fact of
20 controversy.

21 Q. But the fact of the matter is is that for the
22 last 46 years, the tobacco industry has insisted that
23 there is no proven connection between cigarette
24 smoking and disease; correct?

25 MR. PLESEC: Objection.

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1 A. As I told you, they say that, but they also have
2 said unequivocally, quote, controversy, close quote.

3 Q. And you would agree that people, that the
4 public, when they hear the cigarette industry make
5 those statements, --

6 A. Uh-huh.

7 Q. -- are entitled to rely on those statements made
8 by the industry.

9 A. Yes, because it is true statement.

10 Q. Okay. So when smokers in Minnesota hear the
11 tobacco industry say that cigarette smoking does not
12 cause disease, they're entitled to rely on that
13 statement; right?

14 MR. PLESEC: Objection.

15 A. As I've told you time and again, they have also
16 said controversy, it's a matter of controversy.

17 Q. But the bottom line is is that the cigarette
18 industry and R. J. Reynolds Tobacco has insisted that
19 it has not been proven that cigarette smoking causes
20 disease; correct?

21 MR. PLESEC: Objection.

22 A. You used the word "controversy."

23 Q. No, I used the word "cause."

24 A. Well if -- if there's controversy, then there is
25 no proven cause; that is by definition, which way you

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1 define the word "controversy," close quote.

2 Q. And you would agree that smokers are entitled to
3 rely on those statements made by yourself and your
4 company, R. J. Reynolds; correct?

5 A. Correct.

6 MR. PLESEC: Object.

7 Q. And you know that if smokers rely on that
8 statement, they're either going to continue to smoke
9 or even start smoking; correct?

10 MR. PLESEC: Objection.

11 A. They also listen to other part part -- other
12 people.

13 Q. But the tobacco industry should be the people
14 that know the most about their products; correct?

15 MR. PLESEC: Objection.

16 A. Again, we always have a situation of
17 controversy. As I said, that cannot be pushed under
18 the rug.

19 (Discussion off the stenographic record.)

20 A. That cannot be pushed under the rug.

21 Q. But again, you believe that your position on --
22 on the smoking and health --

23 A. Come again?

24 Q. You believe that your position on the smoking
25 and health issue is reasonable; correct?

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1 A. That is my position, yes.

2 Q. And so it would be equally reasonable for a
3 smoker, in reliance on the tobacco industry, to reach
4 the same conclusion that you do; correct?

5 MR. PLESEC: Objection.

6 A. I have --

7 I represent what I consider to be the truth, and
8 I am trying to convince whoever listening to be in
9 accord with my opinion, yes.

10 Q. Right. And so it's entirely foreseeable, both
11 by you and by your company, that when you make
12 statements such as "It has not been proven that
13 cigarette smoking causes disease," that smokers are
14 going to continue to smoke or start to smoke based on
15 those statements; correct?

16 MR. PLESEC: Objection.

17 A. We're coming again to the issue --

18 "Controversy" means while we do not believe
19 that it has been proved, we do not deny the
20 possibility that it may be so.

21 Q. But you continue to emphasize, both you and your
22 company over the last 46 years, that it's never been
23 proven that cigarette smoking has caused the death of
24 even one person; correct?

25 MR. PLESEC: Objection.

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1 A. I mean you're distorting the -- the facts.
2 "Controversy" means we don't believe so but we do
3 not deny the possibility that that may be. You
4 cannot say the way you phrased it unless you
5 emphasize the word "controversy," close quote. The
6 "controversy" means we believe no, but we cannot
7 deny the possibility that it may be so.

8 Q. As you sit here today, do you believe that
9 smoking has caused the death of even one human being?

10 A. I told --

11 I can regurgitate my saying again and again.

12 Q. I'm going to repeat the question. As you sit
13 here today, do you believe that smoking has caused
14 the death of even one human being?

15 A. Well there is one exception: If somebody uses
16 his -- a cigarette to burn his -- his home, but not
17 from the point of view of health, no.

18 Q. And -- and your position is the same as the
19 tobacco industry's position; correct?

20 MR. PLESEC: Objection.

21 A. My -- my -- my --

22 My position is that the connection -- or
23 allegations of the connection between smoking and
24 health are a matter of controversy. In other words,
25 it is probably no, but we cannot deny the possibility

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1 that it may -- there may be a connection. I mean we
2 regurgitate that for the 15th time. I don't think
3 there's any -- any need for you --

4 You cannot coerce me into -- into lying or --
5 but if you can.

6 MR. PLESEC: Dan, just for the record, we
7 have a new party who has just entered the deposition
8 room and I'm not sure who it is.

9 Would you please identify yourself for the
10 record?

11 MR. DOUGLAS: I'm Cliff Douglas.

12 MR. PLESEC: And who do you represent?

13 MR. DOUGLAS: Representing the plaintiffs
14 here in the New York action.

15 MR. O'FALLON: I have no further
16 questions.

17 THE REPORTER: We'll go off the record,
18 please.

19 (Discussion off the record.)

20 DIRECT EXAMINATION

21 BY MR. PLESEC:

22 Q. Dr. Colby, I would like the court and the jury
23 to know a little bit about you.

24 A. Okay.

25 Q. First of all, sir, on what date were you born?

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1 MR. O'FALLON: Objection.

2 A. According to my birth certificate, April 10,
3 1915.

4 Q. And if I'm correct, that would make you 83 years
5 of age on your next birthday?

6 MR. O'FALLON: Objection.

7 A. Correct.

8 Q. Sir, have you -- have you been married?

9 A. Yes.

10 Q. Did your wife recently die?

11 A. In March of '95, yes.

12 MR. O'FALLON: Objection.

13 Q. And how long were you married?

14 MR. O'FALLON: Objection.

15 A. We were married, to the best of my recollection,
16 about 44 years.

17 Q. And do you have any children?

18 A. A daughter and a son.

19 Q. A daughter and a son.

20 And how old are your children?

21 A. My daughter is going on 43, two days -- on
22 December 16th she was 43.

23 Q. And your son is how old?

24 A. He's 32.

25 Q. How did your wife die?

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1 MR. O'FALLON: Objection.

2 A. She was malpracticed to death.

3 Q. What do you mean by that?

4 MR. O'FALLON: Objection.

5 A. We had a house in Montauk. My wife for most of
6 her life was a sculptrist. She took, in the early
7 spring, as she always did all these years we had the
8 house in Montauk, she took a stone so she could work
9 on the stone during the summer while she was in
10 Montauk, and I visited her at least every weekend.

11 She had for a long time been treated for angina,
12 which she inherited from her father, basically. She
13 had a mild angina attack. She called the hospital in
14 Southampton to overcome the consequence of the
15 attack. She was remedied at the house -- at the
16 hospital in Southampton, and she demanded to be taken
17 back to our Montauk house so that I could pick her up
18 and take her home to New York City.

19 The Southampton hospital, against the law,
20 refused and insisted that she either stay at the
21 hospital in Southampton or go to other hospital.
22 Under those conditions, she did not know that she had
23 the right, know matter what, to go back, even if her
24 doctors in Southampton believed that she would have
25 bad consequences or even die, but they said she did

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1 not have that right and they forced her to stay at
2 the hospital in Southampton and then to go to another
3 hospital.

4 My wife had had a -- a heart specialist for 15
5 years. The hospital in Southampton refused to take
6 her to her doctor -- and they coerced her to take her
7 to other hospital -- which was in walking distance,
8 the Cornell. My wife's physician for 15 years was a
9 very well-known heart specialist at Cornell
10 University. They coerced her against her will to go
11 to Lenox Hill Hospital where she didn't know a single
12 physician or -- at all. They forced her.

13 My wife was very temperamental. She screamed
14 that she did not want to go be treated by a physician
15 in a hospital she had absolutely no knowledge about,
16 but they coerced her anyway. They -- her vehement
17 protests were so vehement that a nurse at the
18 Southampton hospital was so upset from a personal
19 point of view, she called me and she said, "Look what
20 they're doing to your wife. They're coercing her to
21 go to a hospital where she doesn't have a regular
22 doctor. Why don't you ask your doctor to be there at
23 the other hospital when she arrives." Now that is
24 not possible because he had to be admitted to the
25 hospital to go there. She --

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1 When she was in the ambulance, she also asked
2 the ambulance that she did not want to go to the
3 hospital, Lenox Hill, where she was forced to go, she
4 wanted to go to a hospital which was in walking
5 distance of the other hospital. The ambulance
6 refused, and I believe the ambulance was correct;
7 they have no right to follow anything but the
8 instructions they got from the hospital where exam
9 had occurred.

10 They took her to the Lenox Hill Hospital and she
11 protested again that she did not want to stay here
12 because she didn't know anybody. The hospital, Lenox
13 Hill Hospital, forced her anyway to stay. All of
14 this was absolutely against the law.

15 I then -- I -- I stayed in the -- in the City.
16 The reason I didn't accompany my wife to our Montauk
17 house, because all -- the sole purpose of her trip
18 that particular day, going to Montauk, was to take
19 the stone to the house in Montauk and have somebody
20 unload it, and she would then go back. There was no
21 point in me joining her. And then, as I mentioned a
22 few minutes ago, there was this angina attack.

23 Q. What happened to her at the hospital, doctor?

24 A. Wait a minute.

25 MR. O'FALLON: Wait. Can I --

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1 Let me just state for the record, I just am
2 going to make an objection to this entire line of
3 questioning as being outside the scope of my
4 examination and completely irrelevant.

5 A. At the hospital, she was, I believe -- she was
6 treated again by physicians against her pro --
7 against her protests, and she was -- it was a pure
8 diagnostic procedure called an angiogram, and she was
9 killed while she was operating table of the hospital,
10 in the Lenox Hill Hospital.

11 Q. So she died on the operating table?

12 MR. O'FALLON: Objection.

13 A. Pardon?

14 Q. She died while she was on the operating table?

15 MR. O'FALLON: Objection.

16 A. That is correct.

17 Q. Doctor, has the --

18 Have the circumstances surrounding the death of
19 your wife been a matter of grave depression and a
20 matter that has been very upsetting to you?

21 A. Of course.

22 MR. O'FALLON: Objection.

23 A. But it confirmed my long-held opinion about the
24 total corruption of the American medical-care
25 system.

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1 Q. Doctor, are you currently being treated for any
2 medical conditions?

3 A. Pardon me?

4 Q. Are you currently being treated for any medical
5 conditions?

6 A. I had -- I had a fall a few weeks ago going to
7 the Metropolitan Museum of Art, and I was treated by
8 a surgeon at Mount Sinai Hospital.

9 Q. And what did they do for you at Mount Sinai
10 Hospital?

11 A. The arm was very much hurt. It went out of the
12 socket, number one, the socket up here, and it was so
13 much broken that they had to replace it by metal
14 rather than using the bone as natural. They had to
15 replace part of the bone by a metal -- piece of metal
16 instead.

17 Q. And is that the reason you are wearing your
18 sling today?

19 A. That is correct, yes.

20 Q. And as you mentioned yesterday, this injury is a
21 matter of pain and discomfort to you; is it not?

22 MR. O'FALLON: Objection.

23 A. Yes. It makes me -- makes it difficult for me
24 to get a regular sleep pattern.

25 Q. Okay. How many hours of sleep did you have last

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1 night?

2 MR. O'FALLON: Objection.

3 A. I went to bed at midnight and I woke up around
4 4:00 o'clock this morning, and I could not fall
5 asleep again.

6 Q. And how many hours of sleep did you have the
7 night before last?

8 MR. O'FALLON: Objection.

9 A. Similar, except I woke up at 3:00.

10 Q. And you are currently being treated by Dr.
11 Roane, who is in attendance at this deposition, for
12 depression?

13 MR. O'FALLON: Objection.

14 A. I have been treated by Dr. Roane successfully
15 for depression way before my non-coincidental --
16 my -- my coincidental fall. I was cured by the
17 medication which Dr. Roane gave me. I mean I -- I no
18 longer have the depression, but I am still in
19 treatment because those things have to be pursued for
20 some time. So I -- I'm still consulting him because
21 of --

22 I have to continue taking the medication, and so
23 I'm still using him on a regular basis, close quote,
24 as a psychiatrist, and also because the accident
25 naturally had a negative effect on my temperament.

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1 Or my -- yeah, right.

2 Q. So you are currently taking medication for your
3 depression; is that correct?

4 A. Correct.

5 MR. O'FALLON: Objection, leading.

6 Q. Now doctor, what effect, if any, do these
7 medical conditions that you currently have have on
8 your stamina?

9 MR. O'FALLON: Objection.

10 A. On my what?

11 Q. Your stamina.

12 A. Well I mean, since I'm not exactly a juvenile
13 delinquent, the fact of my age, the limited sleeping
14 is somewhat impairing my -- my stamina and so forth.
15 So I -- I am functioning generally way beyond --
16 better than my age, but right now the fatigue makes
17 it a little bit difficult for me to be a hundred
18 percent on top of things.

19 Q. And do your medical conditions from time to time
20 affect your ability to concentrate?

21 MR. O'FALLON: Objection.

22 A. Pardon me?

23 Q. Do your medical conditions from time to time
24 affect your ability to concentrate?

25 MR. O'FALLON: Objection.

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1 A. Correct, yes.

2 Q. Doctor, now you were born in Germany; were you
3 not?

4 A. Correct.

5 MR. O'FALLON: Objection.

6 Q. And you grew up at a time when the Nazi regime
7 was coming into power?

8 MR. O'FALLON: Objection.

9 A. That is correct. The early years, no, but the
10 later years, yes.

11 Q. Okay. Did there come a time when you began to
12 fear for your life as a result of the Nazi regime?

13 MR. O'FALLON: Objection.

14 A. That is correct, yes.

15 Q. And would you please explain to the court and
16 jury what your concerns were.

17 MR. O'FALLON: Objection.

18 A. In Germany at the time, the high school which I
19 was in at the time -- all the high schools were
20 divided by social class. Upper-class people would go
21 to high schools which would teach --

22 (Discussion off the stenographic record.)

23 A. -- Latin and/or Greek as a foreign language.

24 That was the distinction of the upper-class high
25 school, which was Gymnasium. Middle-class people

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1 would go to high school where there was no Latin or
2 Greek, but there was two foreign languages, like
3 French and English or whatever.

4 I went to the high school, since my father was a
5 medical doctor, and of course he was -- in spite of
6 the fact of being Jewish, he was a chairman of the
7 medical -- of the local county medical society, and
8 so at the time before Hitler came to power, my family
9 was very prominent in the small-town community. When
10 the Nazis came to power in 1933, that was my
11 next-to-last year before graduating from high
12 school.

13 All my classmates -- all my classmates were
14 Nazis. And a Nazi, by my definition, is somebody who
15 was a Nazi before Hitler -- Hitler came to power.
16 Only one exception was a young guy who pick -- who
17 could become a member of my class because he was
18 unusually intelligent and -- and -- even though his
19 father was only a lower-class bureaucrat. So to
20 repeat, all my classmates, with the exception of this
21 one friend and myself, were Nazis.

22 The strange thing evolved that the Nazis would
23 protect me from being beaten up by the kids from
24 other classes, but they would go ahead and beat up
25 Jewish kids from other classes. But they also were

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1 very hostile; made it very clear to me what --
2 what -- what would happen.

3 There was one incident -- at the time there was
4 no such thing as television. There was one incident
5 where Hitler gave a speech and I found it ridiculous
6 and I laughed, and my friend -- with double quotes on
7 each side -- told me, "Frank, we guarantee you, you
8 will not continue laughing for a long time." That
9 was the ultimate warning, that whatever Hitler and
10 the Nazis had said in their propoganda was not hot
11 air but was -- would be the truth.

12 In order to be doubly sure, I spent my vacation
13 between my next-to-last year in high school and my
14 last year in high school in France in order to get
15 perspective. I went deliberately to one part of
16 France which was known to be the most anti-German in
17 all of France; that was a town in Lorraine called
18 Nancy. One of my objectives was to get a perspective
19 because I said I might be paranoid and have fears
20 which were not justified. Being in France, I got the
21 perspective, and if anything it reinforced my
22 conviction that unless there was intervention from
23 the outside, the Nazis would engage in pogrom against
24 the German Jews.

25 I went back for my last year of high school and

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1 I was submitted to various kinds of pressure, but it
2 also had an advantage. Because of the anti-Semitic
3 prejudices of the German Nazis, I was never asked the
4 question because they had this concept since my
5 father was a doctor, I always would know the answer.
6 They didn't ask me any questions. On top of that I
7 was Jewish; they also thought all Jewish were
8 intelligent. So all of -- for all of the last school
9 year they never asked me any question because they
10 assumed I knew it all. So that was the advantage of
11 anti-Semitism and so forth.

12 I then finished my high school class, and based
13 on my previous experience and decision, I went to
14 university in -- first in France and then in the
15 French part of Switzerland, because I wanted to be
16 doing my career in the cultural ambience which was
17 different from the -- the German culture and
18 ambience, and that's the reason I went first to
19 France, and then I had difficulty in transferring
20 money from Germany to France, and I went to the
21 French part of Switzerland because it was possible to
22 send money from Germany. My parents would send money
23 from Germany for my studies. And I went to study all
24 the rest of my studies in Geneva, which is the most
25 important city in the French part of -- of

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1 Switzerland.

2 Q. Okay. Doctor, when you left Germany to go to
3 Switzerland, did you leave Germany because of your
4 fear of the Nazi regime?

5 MR. O'FALLON: Objection.

6 A. Absolutely.

7 Q. And at any time during the period when the Nazi
8 regime was in power in Germany, did you return to
9 Germany?

10 MR. O'FALLON: Objection.

11 A. No.

12 Q. At any time during the period you were living in
13 Switzerland, did you have an opportunity to see your
14 parents?

15 MR. O'FALLON: Objection.

16 A. In the first year, the parents, quickly;
17 afterward it was not possible.

18 If you left Germany as a Jew, they would
19 confiscate your pro -- you could not return, and they
20 would confiscate your property. So my parents did
21 not leave Germany to visit me. We only corresponded
22 by -- by letter and -- and by telephone. However, I
23 was so convinced that there would be a catastrophe
24 sooner or later that I had a --

25 I was telling the fact that as a Jew you could

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1 not leave Germany. There only was one condition
2 under which you could leave Germany without all your
3 property being confiscated, and that was that a close
4 relative of the person living in Germany had a very
5 serious disease or whatever. I mentioned that at a
6 social gathering, and there was somebody who was --
7 whom I didn't know at the time, he -- he told me,
8 "I'd like to talk to you after the party is over." I
9 said, "Okay." And he told me that he was a -- a
10 doctor and he was going to help me. As a condition,
11 I would swear I would never tell. He told me, "I
12 will help you committing fake suicide so that your
13 parents can come and visit you, and then you can try
14 to convince your parents that it was -- that it was
15 insanity, suicidal to stay in Germany."

16 He did that. He gave me some pills and he -- we
17 agreed I would not know what the pills were. I
18 committed suicide, fake enough, that the outside
19 doctor, I mean a doctor from the -- from the -- from
20 the city had certified that I had tried to commit
21 suicide but I had failed. My parents under those
22 conditions, both my father and my mother, were
23 permitted to leave Germany without the threat of all
24 our property in Germany being confiscated.

25 I told my parents what I had done. I told my

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1 parents that I committed a fake suicide in order to
2 convince them that staying in Germany was foolishness
3 and absolutely suicidal, that it would be better for
4 them to live as paupers outside of Germany rather
5 than live in -- in Germany, because sooner or later
6 there would be pogrom of -- of -- of some kind.

7 My father could not be convinced. He could
8 not. As I told you, he was a medical doctor. By
9 that time he could not practice with anybody except
10 Jewish patients, but he had a few patients who were
11 calling -- non-Jewish patients who had to pay him,
12 which they didn't have to do if they -- if he was --
13 if he had not been Jewish. They paid because they
14 believed him. He was a specialist in -- he was an
15 ophthalmologist, an eye doctor. I could not convince
16 him that he -- even though he had been established
17 for a long time in the community, that my father's
18 family had been in Germany for at least three or four
19 generations, I could not convince him that he had to
20 leave Germany.

21 My father was extremely intelligent. In
22 addition to being a successful doctor and to be
23 chairman of the county medical society, he was an
24 excellent painter, he was an outstanding pianist, and
25 he was also a national chess player, being a chess

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1 player of national reputation within Germany. So he
2 was exceptionally talented. But in spite of all this
3 way-above-average knowledge, I was not able to
4 convince him that if he stayed in Germany he would
5 not survive. My father --

6 My mother, who came from a very wealthy Jewish
7 family and who was much less intelligent than my
8 father, agreed with me, and she tried to convince my
9 father, meaning her husband, to leave Germany, but
10 even -- even though I pleaded, my mother pleaded, my
11 father said, "I know that nothing is going to happen
12 to me because my colleagues are going to protect me."

13 Q. Did your parents return to Germany?

14 MR. O'FALLON: Objection.

15 A. I was just --

16 Then my -- my mother post wanted to divorce my
17 father. They both returned to Germany. It was in
18 the beginning of 1938.

19 Q. Did you ever see your father again?

20 A. No.

21 MR. O'FALLON: Objection.

22 Q. What happened to him?

23 A. My father was --

24 MR. O'FALLON: Objection.

25 A. You may have heard the expression

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1 "Krystalnacht." My father was arrested during
2 Krystalnacht, taken to concentration camp, and came
3 back, if you can call it that, back in a sealed
4 coffin. My mother was told if she opened the coffin,
5 she would go to -- to jail. So --

6 And in other words, my father was killed in the
7 concentration camp. We later found out that the way
8 he was killed -- he was about 55 years. The way he
9 was killed, it was during the winter; they forced him
10 to sleep outside, and he -- out in -- in the outside
11 on the grass, and they sprayed him with cold water.
12 So that's the way -- that's the way he died. We
13 found it out by other people who were able to
14 survive.

15 Q. Did you have other family and friends lost in
16 the holocaust?

17 MR. O'FALLON: Objection.

18 A. Pardon me?

19 Q. Did you have other family members or friends who
20 were lost in the holocaust?

21 MR. O'FALLON: Objection.

22 A. Yes. Several members of my family -- some
23 survived, others stayed in Germany and were dying in
24 other concentration camps.

25 Q. What --

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1 A. I was able to save my mother because -- I hate
2 to use this kind of terminology -- even if she was
3 much less intelligent, she said, "I don't care, as
4 long as I survive, what the conditions are." I was
5 able --

6 I had a British girlfriend, and I, with the aid
7 of my British girlfriend, who was a daughter of a
8 professor in Oxford, I was able to get my mother a
9 position as a nursemaid -- I'm sorry, as a maid
10 nurse, rather, in an insane asylum in England. This
11 was a whole new condition. But my mother, to repeat,
12 came from an extremely wealthy home. In spite of
13 that, she said, "I don't care," and she took that
14 position in the -- as a -- as a maid and nurse in the
15 insane asylum. She later on was able to get a
16 position as a -- as maid in a -- with some other
17 companies and was treated extremely well. And she
18 survived and she arrived in the United States at the
19 end of -- after the end of World War II,
20 approximately within a few months of my getting to
21 the United States.

22 Q. Okay. Now --

23 A. The --

24 Q. Oh, excuse me.

25 A. The -- the --

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1 As I said, the other part of my family, my
2 mother's brothers, they were successful in leaving
3 Germany. During the Hitler's days before the
4 outbreak of the war, several members of my father's
5 family were killed in various concentration camps.

6 Q. Doctor, I'd like to direct your attention to the
7 training that you received at the University of
8 Geneva in Switzerland.

9 MR. O'FALLON: Objection.

10 A. That's correct.

11 Q. Would you please describe for the court and jury
12 what your undergraduate training involved.

13 A. I was studying chemistry. That was my study
14 objective. The University of Geneva at the time --
15 this was nothing I had planned, but -- but it
16 happened to turn out, an unusually fortunate fact and
17 coincidence. University of Geneva was one of the
18 half -- very, very few universities in the world who
19 did not concentrate on specialization. In other
20 words, chemistry, if you study it in the United
21 States or in England or in Germany or wherever at the
22 time, you would basically spend 90 percent of your
23 time as a student before a degree studying chemistry,
24 period. The unusual circumstance at the University
25 of Geneva was you were coerced into a broad spectrum

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1 of intellectual activities. I was coerced -- I had
2 no choice -- I was coerced to take high math and pass
3 an exam in high math; I was forced and coerced to
4 take an examination in zoology; I was forced and
5 coerced to take an examination in botany; and then,
6 of course, a number of chemical subjects. But the
7 feature which was very unique at the time was that
8 the spectrum of education was very broad, contrary to
9 the practice all over the world in -- in
10 universities.

11 Later on, after I came to the United States, it
12 turned out to be unusually fortunate circumstances.

13 Q. Doctor, before we get to the United States, did
14 you also take a Ph.D. program at the University of
15 Geneva?

16 MR. O'FALLON: Objection.

17 A. I first started in 1939 as a, quote, chemical
18 engineer, and then I graduated in 1941 as a --
19 what -- what in the United States is a Ph.D.

20 Q. Okay. And what did your doctorate or Ph.D.
21 program involve?

22 A. It involved chemical -- synthesis of a variety
23 of chemical -- chemical substances.

24 MR. PLESEC: I think we'll take a short
25 break at this time.

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1 THE REPORTER: Off the record, please.

2 (Recess taken.)

3 BY MR. PLESEC:

4 Q. Dr. Colby, in addition to your educational
5 degrees, do you have any other certificates or honors
6 to your credit?

7 A. Pardon me?

8 Q. In addition to your educational degrees, do you
9 have any other certificates or honors to your credit?

10 A. More recently I was made a part of the Who's Who
11 in America, which includes less than 150,000
12 biographies for the United States.

13 Q. Okay. Do you have any other degree -- or honors
14 or certificates?

15 A. There was some certificate way back when, I've
16 forgotten by now, being a special member of the
17 American Chemical Society, but I don't remember the
18 details any more.

19 Q. Okay. Are you also a -- going to be in the
20 first edition of Who's Who in Medicine and Health
21 Care in America?

22 MR. O'FALLON: Objection.

23 A. That is correct, yes.

24 Q. Dr. Colby, I would like to direct your attention
25 to the time when you first came to the United States.

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1 A. Uh-huh.

2 Q. At that time you were employed by a company
3 called Industrial Tape Corporation; is that correct?

4 MR. O'FALLON: Objection.

5 A. That is now -- that is part of Johnson &
6 Johnson.

7 Q. And that is located in New Jersey?

8 A. New Brunswick, New Jersey, yes.

9 Q. Okay. And what position did you hold with
10 Industrial Tape Corporation?

11 A. A bench synthetic chemist.

12 Q. And how long did you stay with that company?

13 A. A few months, because they didn't keep their
14 promise.

15 (Discussion off the stenographic record.)

16 A. They did not keep their promise what I was
17 supposed to do. After three or four months they
18 hadn't kept the promise which they'd made to me
19 for -- for taking the job, and I started looking
20 around for another job.

21 Q. Okay. Did you apply for another job at the
22 Commercial Solvents Corporation?

23 MR. O'FALLON: Objection, leading.

24 A. Among others, yes.

25 Q. Okay. And what position did you apply for at

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1 Commercial Solvents Corporation?

2 A. I applied at the time for a position as an
3 organic synthetic bench chemist.

4 Q. Okay. And did you receive an offer for that
5 position?

6 A. No. After I got there, my then and future boss
7 told me that he changed his mind because of my
8 unusual educational background, which I've explained
9 before the break. He had another idea because the
10 Commercial Solvents Corporation had an unusual
11 spectrum of -- of products, and they had anything
12 from high-volume synthetic chemicals and solvents to
13 pharmaceutical products. And by and large the
14 American education in chemistry and related subjects
15 was specialized, and most of the people did not have
16 the ability that you be expert in a variety and
17 relatively unrelated topics. Since, as we joked, I
18 was ignorant on many subjects, he offered me a
19 position of heading the information department, which
20 was at that time in the beginning of being created,
21 and he offered me a complete liberty of action,
22 because it was a discipline -- scientific information
23 was a discipline in those years in full development.

24 The scientific information science as a separate
25 discipline was something which started to develop at

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1 the end of World War II for the reasons that all
2 industries in all industrial countries became very
3 diversified and no longer excessively specialized.

4 And to repeat, I was very much interested
5 because it was a novel area of science parallel with
6 my education, and I got the complete freedom of
7 action to organize the department freely without any
8 consideration of money involved. It was my say-so
9 which would decide what would and would not be done.

10 Q. Okay.

11 A. That's the reason I -- main -- that was the main
12 reason I accepted the position at the time; not the
13 money, but the -- the freedom of action.

14 Q. And who was your immediate supervisor at
15 Commercial Solvent?

16 A. The vice-president, called Kenneth Hoover.

17 Q. And did he subsequently take a position with the
18 R. J. Reynolds Tobacco Company?

19 A. That is correct.

20 MR. O'FALLON: Objection.

21 A. Yes.

22 MR. O'FALLON: Leading.

23 Q. And did he subsequently offer you a position at
24 the R. J. Reynolds Tobacco Company?

25 A. Correct. He --

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1 We were both --

2 Q. What was --

3 A. -- disappointed with the -- after -- after five
4 years at Commercial Solvents, my -- my five years and
5 his term, about 10 or 15 years, we were both
6 disappointed with development of Commercial Solvent
7 because of what we considered the flawed management,
8 non-technical management. So Ken gave them an
9 ultimatum; they had to diversify or he would quit.
10 They didn't accept his ultimatum and he quit.

11 I was just as disappointed. I'd done many
12 chores which were, I thought, would be leading to
13 profitable results at Commercial Solvents. They
14 didn't accept my ideas, so I got tired, too, and I
15 also looked for a -- a new job. And of course I
16 asked Ken -- Ken Hoover to be a reference for me, and
17 he told me, "I'll be a reference for you on the
18 condition that you either accept or turn down a job I
19 have for you." And then I went to have an interview
20 with him.

21 And I, again, preferred to have a position and
22 accept the position he offered me as Science
23 Information Division, which there was nothing there
24 at RJR Tobacco Company, there was no research
25 department, there was nothing except a few bench

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1 engineers, and be setting up a scientific research
2 department from scratch. That was something which
3 was parallel not only -- at the time we're talking
4 about, the time we're talking about, the early '50s,
5 it was parallel to -- by many or most other
6 industries in the United States and in the world,
7 except chemical industry and analytically the
8 pharmaceutical industry. There was no such thing as
9 research of any consequence in anything except, to
10 repeat, chemical and pharmaceutical industries. That
11 just didn't exist. And the tobacco industry, and
12 specifically RJR Tobacco Company, didn't have any
13 research department at the time.

14 Q. What -- what was the title of the position you
15 were given at the time you joined R. J. Reynolds
16 Tobacco Company?

17 A. My title changed over the years. I believe at
18 the time it was manager of science information.

19 Q. And what was your responsibility? What were
20 your duties and responsibilities in that position?

21 A. Again I --

22 Again, Ken gave me complete liberty, no monetary
23 restriction, of setting up a science information
24 department for the -- to be up -- set up research
25 department. I mentioned before that it was a period

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1 in which science information as a separate science
2 was in full development.

3 I was active, an active member of building a --
4 not just a sitting-in-the-audience member of the
5 Chemical Literature Division of the American Chemical
6 Society, which was at that time pioneering scientific
7 information. People got together from various
8 industries, from chemical industry, from the
9 petroleum industry, mechanical industries, to develop
10 methodology of scientific information which would fit
11 the demands of the day. None of my colleagues were
12 tobacco industry, they were chemical industry -- for
13 example, one of my closest associates was the head of
14 the Chemical Literature Division of Exxon Company,
15 and others, who were less close friends, were in
16 charge of chemical -- of -- of chemical literature or
17 scientific literature for other companies.

18 Q. Okay. When you arrived at the -- the R. J.
19 Reynolds Tobacco Company, was there any kind of a
20 library in place at the time?

21 A. Nothing. They had made a Bible.

22 Q. Okay. And as part of your duties and
23 responsibilities, then, you were charged with
24 procuring books, periodicals, --

25 A. That's correct.

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1 Q. -- and other published materials --

2 A. That's right.

3 Q. -- relating to tobacco?

4 A. Among other things. It was --

5 Again, tobacco was a -- as a science, it was a
6 start at the -- at that particular time, and my
7 purpose was to acquisition an industrial library
8 which would have holdings, books and periodicals in
9 any science which might be applicable to the research
10 related to the cigarette industry.

11 I transferred most of my activities to New York
12 City because in North Carolina there was no manner of
13 acquisitioning books. New York City at the time was
14 the center of the United States where you could
15 acquisition scientific periodicals and where you
16 would also exchange methodological with your --
17 discussion with your colleagues. So I was -- had an
18 office here in New York City on Park Avenue and 42nd
19 Street, and the main purpose was because I -- it was
20 easier here as -- as anywhere else in the United
21 States of acquisitioning to build a -- a good
22 scientific library.

23 With time, within a year or two, the library
24 which I set up in Winston-Salem, North Carolina, was
25 the biggest industrial library -- industrial library

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1 south of Washington. There was -- of course there
2 were industrial libraries in the northern part of the
3 United States, like in New Jersey, the chemical
4 companies and the pharmaceutical companies, their
5 industrial libraries were naturally larger than my
6 library because they were set up for many years, but
7 south of Washington, there was not a single
8 industrial library which had the same level of
9 holding as the library which I set up for Commercial
10 Solvents at that time.

11 Q. What types of books and periodicals and
12 materials did you procure for the library at R. J.
13 Reynolds?

14 A. There was practically no tobacco labeled
15 scientific literature. I acquisitioned everything
16 which was related, chemistry, biochemistry, and with
17 time, more and more medical, basic medical
18 literature.

19 Q. Okay. At the time that you joined R. J.
20 Reynolds Tobacco Company, there was not a research
21 department; was there?

22 MR. O'FALLON: Objection, leading.

23 A. No. I told you there were a few bench engineers
24 who dealt with how to clean a machine chopping
25 tobacco.

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1 Q. Okay. And did you help establish a formal
2 system for writing up research reports by scientists
3 in the developing research department?

4 A. That is correct. As I mentioned, that I was
5 active member of the Chemical Literature Division of
6 the American Chemical Society, and one of the
7 purposes was to create for the United States a
8 reliable quoting system for the activities of the
9 research departments which did not exist in any -- at
10 that time in a very systemized -- systematized and
11 formalized form.

12 Q. Okay. Now for example, one of the procedures
13 that you put in place was the use of laboratory
14 notebooks; is that correct?

15 A. Correct.

16 MR. O'FALLON: Objection.

17 A. Yes.

18 MR. O'FALLON: Leading.

19 A. I --

20 Q. Would you please explain to the court and the
21 jury how the laboratory notebooks were used?

22 A. Well, there were various kinds of things in
23 fashion at the time. The best one, according to my
24 assessment and also some other industries', was a
25 laboratory notebook which each page was a duplicate,

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1 one white page which could be torn out and one yellow
2 page which was not removable, and so whatever any
3 scientist or engineer would write down was
4 automatically in duplicate. To repeat, the first --
5 he would write on the white page, but it would
6 automatically be copied on the yellow page. The
7 white page was removable and the yellow page was not
8 removable. So no matter what, you had a duplicate of
9 your record just in case of any catastrophe or other
10 happenstance. Whatever the laboratory scientist
11 would describe as his activity was available in -- in
12 duplicate and without depending on a secretary or
13 anything like that. Each scientist would write down
14 his work and experiments in his notebook.

15 Q. Now from time to time were the scientists
16 required to turn in the white page of the notebook?

17 A. That's right. Regularly. I don't remember
18 the -- what the schedule, but it was roughly every
19 couple -- every couple of months he had to turn in
20 the white pages, not keep them locked in his drawer.

21 Q. And how -- how much detail regarding the work
22 being performed by the scientist was recorded in the
23 notebook?

24 MR. O'FALLON: Objection, foundation.

25 A. The minimum detail was what is mandatory in

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1 order to publish an article in a scientific peer
2 review journal. That was the minimum.

3 By and large, most of the activities described
4 were more detailed than what is in the average
5 scientific -- be it medical or be it chemical or be
6 it whatever. Peer review scientific journal was more
7 detailed, so it was possible for anybody at a later
8 time to check up whatever -- whatever the guy did was
9 good and could be repeated to check out whether the
10 experiments he described were correct and they could
11 be repeated in later years.

12 Q. Okay. Now Dr. Colby, in connection with your
13 duties and responsibilities as the director of
14 information at R. J. Reynolds, --

15 A. Uh-huh.

16 Q. -- did you have any duties or responsibilities
17 dealing with the patents or patent position of the
18 company?

19 MR. O'FALLON: Objection.

20 A. Yes. My -- my job activities as head of
21 scientific information covered the whole gamut of
22 results of research. One was, for example,
23 analytical -- analytical methods, other was related
24 to invention. Anything that was related to invention
25 had to be in the format that if you applied for a

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1 patent regarding any discovery, would be so that it
2 would be acceptable for a patent by the U.S. Patent
3 Department in Washington.

4 Q. Okay.

5 A. So in other words, this was a legal activity in
6 a sense because anything like that had to be approved
7 by a patent lawyer, internal and externally.

8 Q. Now did the -- the scientists at R. J. Reynolds
9 then have a duty or responsibility, once they
10 concluded their research, to write it up?

11 MR. O'FALLON: Objection, leading.

12 A. Of course. It was a mandatory report system,
13 and at the very least you had to report about your
14 work at least once a year. And I had a clerical
15 date-related monitoring system, that if a particular
16 bench scientist had not reported on his work by a
17 certain time period, he would be advised that you had
18 to do that. If he was still not forthcoming, the
19 clerk would go to his immediate supervisor, because
20 he had -- they had to supply a report summarizing his
21 activities. This would be available to research
22 management at various levels.

23 Q. Okay. And there were various types of reports
24 that people would write up?

25 MR. O'FALLON: Objection, leading.

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1 A. Come again?

2 Q. There were various types of reports that people
3 would write up at the conclusion of their research?

4 MR. O'FALLON: Objection, leading.

5 A. Not at the conclusion. A, at the conclusion --
6 no. Basically periodically, and then, of course, at
7 the conclusion, if they had a particular project and
8 the project was terminated, they had to write a
9 report on that. But they were also coerced, close
10 quote, to write up at certain periods what they had
11 done so they couldn't procrastinate and not -- and
12 not report what they had done. They had to make
13 reports periodically. At minimum, a project was
14 finished, they had to write a formal report. And the
15 formal report was called RDR, Research Department
16 Report, and that would describe the project from day
17 one until completion.

18 Q. Okay. And there were also reports called CIMs;
19 is that correct?

20 A. That's right.

21 MR. O'FALLON: Objection, leading.

22 A. Yeah. It was --

23 Q. And what is a CIM?

24 A. A CIM was a Concept of Invention Memorandum that
25 was something which -- which was a potential of

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1 leading to a patent.

2 Q. Okay. And there were also reports called
3 product development -- department -- excuse me,
4 product development department memoranda; is that
5 correct?

6 A. Yes, there were.

7 MR. O'FALLON: Objection, leading.

8 A. There --

9 MR. O'FALLON: Give me a second to object
10 between the questions. Okay?

11 A. They were the equivalent of the RDRs, except
12 they were for scientists which were employed not by
13 the research department of RJR but by the development
14 department of RJR. There was --

15 One department was called R&D, Research &
16 Development, and there was two segments, research and
17 development; research more fundamental, development
18 more directly applicable -- applicable to
19 utilization.

20 Q. Okay. Now in addition to collecting material
21 and instituting a -- a procedure for writing research
22 reports, did you also analyze for the company
23 materials that you were receiving in the library?

24 MR. O'FALLON: Objection, leading.

25 A. Pardon me?

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1 Q. Did you analyze periodicals and literature that
2 you were receiving in the library for the company?

3 MR. O'FALLON: Same objection.

4 A. Yes.

5 Q. And would you please describe the kinds of
6 things that you were analyzing?

7 A. Well the -- the problem is it covered the whole
8 spectrum of anything related to tobacco and smoking
9 and so forth, anything from analytical methods for
10 determining sugar and nicotine in tobacco, to medical
11 literature on tobacco, which, with time, was expanded
12 from year to year. There was relatively little
13 medical literature on smoking and health, close
14 quote, until what -- about 1950 there was some, but
15 there was relatively little. And starting in 1950
16 there was more literature each year, so I --

17 I think I mentioned that when I acquisitioned
18 the library, many of the periodicals which I
19 acquisitioned were medical perio -- scientific
20 medical periodicals. All the volumes which I
21 acquisitioned were peer-review-journal level.

22 Q. Did you provide your analysis to people in the
23 company?

24 MR. O'FALLON: Objection, leading.

25 A. Yes.

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1 Q. And how did you --

2 A. I analyzed -- pardon me.

3 Q. Go ahead.

4 A. If I considered something important, I would
5 analyze it.

6 I had an information bulletin which would just
7 list the reference for those, and this was
8 distributed to everybody in the research department
9 and so forth. So if somebody was interested in -- if
10 somebody was specializing in this analytical
11 chemistry of smoke components or something of this
12 sort, he also had the section of new manufacturing
13 technology as represented by new tobacco-related
14 patents or -- and also there was a section, to the
15 best of my recollection, which deals with both
16 smoking and health.

17 Q. Okay. At the time from 1951 until about 1964,
18 was there somebody in the research department who was
19 charged with the responsibility of providing
20 scientific advice to the lawyers for the company,
21 both in-house and outside?

22 MR. O'FALLON: Objection, leading.

23 A. Yes.

24 Q. And --

25 A. That was Alan Rodgman.

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1 Q. Alan Rodgman.

2 Did you from time to time provide Dr. Rodgman
3 with materials that you were receiving in the
4 library?

5 A. That is correct.

6 Q. Okay. And Dr. Colby, while you were at
7 Reynolds, did you also institute a procedure for
8 microfilming the research reports of the scientists?

9 A. That's correct. That was something which was
10 not what we call a general practice, but other people
11 did it.

12 Q. Okay. Now --

13 A. I was prepared, in case of a catastrophe, that I
14 made it mandatory to copy every notebook page on
15 microfilm. That also applied -- I'm sorry, excuse
16 me. I made a mistake.

17 It was mandatory to copy every report page on to
18 the microfilm, which was stored away from the
19 research department building, so in case there was a
20 fire or any other catastrophe, whatever had been
21 recorded in the research department reports was on a
22 microfilm and could be retrieved, to repeat, in case
23 of a catastrophe like a fire or -- or whatever.

24 Q. Okay. Now doctor, did there come a time when
25 you began to take over the responsibilities of Dr.

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1 Rodgman?

2 A. Yes. At one time --

3 Q. Excuse --

4 A. -- Dr. Rodgman and I had to make a career
5 decision, and it was fortunate that Dr. Rodgman's
6 concept and my concept were in accord in the sense
7 that he was interested in a position in research
8 administration, I hated the administration and I was
9 interested in, quote, science, close quote. So that
10 was a fortunate exchange of -- of interest.

11 He became a research administrator and I became
12 a pure research scientist without having to do
13 excessive administrative garbage.

14 Q. Okay. Now do you recall the time -- the year
15 that that occurred where you began to take on the
16 responsibilities of Alan Rodgman with -- with respect
17 to being a scientific consultant to the lawyers?

18 MR. O'FALLON: Objection, misstates the
19 testimony and is leading.

20 A. At the time Dr. Rodgman, while he was the -- the
21 scientist most interested in smoking and health
22 literature and so forth, when he gave up his job and
23 I took his job over, and I -- that obviously included
24 reporting on smoking and health developments to the
25 law department.

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1 Q. Okay. And did you institute any procedures for
2 yourself to distinguish what you were doing for the
3 law department as opposed to what you -- what you
4 were doing for the research department or other
5 departments in the company?

6 MR. O'FALLON: Objection, leading.

7 A. Yes. I demanded and got approval of having my
8 facilities, which were related to smoking and health,
9 keyed separately from the rest of the research
10 department. So my administrative boss could not
11 visit my office.

12 There was a library which was for research
13 department in general which was part of the research
14 department's setup. My facilities relating to -- to
15 smoking and health for the lawyers was separately
16 keyed.

17 Q. Who had access to those facilities where you
18 kept the materials for the work you were doing for
19 the lawyers?

20 MR. O'FALLON: Objection, leading.

21 A. Naturally I had access, and of course the
22 cleaning lady had access. And so we had to joke that
23 my boss, in order to visit my facility, had to sleep
24 with her.

25 So it was not accessible by anybody outside the

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1 law department.

2 Q. Would you please describe for the court and the
3 jury some of the activities that you performed for
4 the lawyers as a scientific consultant.

5 A. I would regularly --

6 MR. O'FALLON: Objection.

7 A. -- read as much as possible, both medical
8 articles and the medical journals which were received
9 by my library, and whatever I -- I -- I read I looked
10 at from the point of view of smoking and health,
11 regardless of whether it had the label "tobacco" or
12 did not have the label "tobacco."

13 Whenever I considered something important, I
14 would call it to the attention of the lawyers by
15 various methods, either by just sending them the
16 article or summary of the article, or by hitting them
17 on the head by pointing out the importance of a
18 specific piece of scientific literature was -- either
19 was directly or indirectly related to smoking and
20 health.

21 Q. Did you have an occasion from time to time to
22 provide advice to the lawyers with respect to
23 potential witnesses in litigation?

24 A. Basically it was limited to poll witnesses. In
25 other words, if somebody had done some work which was

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1 of interest from the point of smoking -- a
2 positive -- a positive interest on smoking and
3 health, I would call it to the attention of the
4 lawyers. On other occasions I was asked to analyze
5 the activity of a specific scientist to determine
6 whether he was a genius or an asshole.

7 Q. Doctor, did you also attend scientific meetings
8 and report on those meetings to the lawyers?

9 A. That is correct, yes. I attended scientific
10 meetings which were related to smoking and health.
11 Most of them were general medical meetings in which
12 tobacco was one of the topics, and I went to those
13 meetings for two reasons: number one, in order to
14 audit a presentation which was pre-announced and
15 related to smoking and health; and also, and in my
16 perception more importantly, it was a source of what
17 I called insider's information. In other words, you
18 would talk to your colleagues about scientific
19 developments of common interest, and you would find
20 out about a research paper which would be published
21 two years from the time you were talking to your
22 colleague, so you had advance information what would
23 be coming down the pike in the medical literature and
24 related literature at a later time.

25 Q. Now doctor, you continued to serve as a

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1 scientific consultant to the lawyers for the company,
2 both inside and outside the company, until the date
3 of your retirement; did you not?

4 MR. O'FALLON: Objection, leading.

5 A. That is correct, yes.

6 Q. Okay. And during the period of time of
7 approximately 1965 through 1983, or the time of your
8 retirement, when you were performing that service, --

9 A. Uh-huh?

10 Q. -- did you have any assistance from others at
11 RJR who helped you perform this duty for the
12 lawyers?

13 MR. O'FALLON: Objection.

14 A. Yes. In addition to the clerks, of course, I
15 had scientific assistance from one of the most --
16 somebody called Dr. Charles Nystrom. He was helping
17 me even -- because, as I mentioned, the volume of
18 scientific literature directly and indirectly related
19 to smoking and health became more and more
20 voluminous, so one person couldn't do it all, so I
21 had -- I had some other scientists accorded to my
22 department.

23 Q. Okay. Do you know Dr. Kenneth D. Orloff?

24 MR. O'FALLON: Objection, leading.

25 A. He was another one of my assistants, yes.

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1 Q. Okay. Dr. Colby, you retired from R. J.

2 Reynolds in June of 1983; is that correct?

3 A. That is "retired" in quotation marks, yes.

4 Q. Okay.

5 A. Formal -- formalistically, yes.

6 Q. And during this almost 16 years, do you have any

7 direct knowledge of Reynolds' product development

8 activities?

9 A. Come again?

10 MR. O'FALLON: Objection, foundation.

11 Q. Do you have any direct knowledge, direct

12 knowledge of Reynolds' product development activities

13 over the last 16 years since you have been retired

14 from the company?

15 MR. O'FALLON: Objection. It's not the

16 right time period; it would be 14 years.

17 A. Limited as far as development is concerned.

18 Q. Excuse me?

19 A. Limited, limited as far as development is

20 concerned, yes.

21 Q. Okay. Counsel is correct, my math was wrong;

22 it's -- it's really about 14 years. Thank you.

23 And would your answer be the same with respect

24 to research that is going on at R. J. Reynolds

25 Tobacco Company during that 14 years?

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1 A. Again, these years, the feedback -- direct
2 feedback became less, yes. But a little bit was
3 there, especially if it was related to -- to smoking
4 and health.

5 MR. PLESEC: I have no further questions.

6 THE REPORTER: Off the record, please.

7 (Discussion off the record.)

8 RECROSS-EXAMINATION

9 BY MR. O'FALLON:

10 Q. Dr. Colby, I'd just like to touch on a couple of
11 the issues that counsel raised.

12 First of all, as to your health, you understand
13 that we first subpoenaed you for a deposition in
14 April of 1997, almost nine months ago; correct?

15 A. Correct.

16 Q. And you understand that because your counsel
17 raised concerns about your health, your deposition
18 has been repeatedly delayed; correct?

19 A. Correct. At the time I had severe depression
20 and so forth, so I had to -- I couldn't have been
21 able to function properly.

22 Q. Okay. And you understand that before this
23 deposition was scheduled here today, counsel for R.
24 J. Reynolds assured us that you would be capable of
25 going through with this deposition.

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1 A. That is correct.

2 MR. PLESEC: Objection.

3 Q. And you understand that, at your request, we
4 started this deposition yesterday late, at 10:00
5 o'clock; correct?

6 A. Pardon me?

7 Q. You understand that at your counsel's request --

8 A. That's correct.

9 Q. -- we started this deposition late.

10 MR. PLESEC: Objection.

11 A. Correct. Thank you.

12 Q. And for instance, yesterday we only went about
13 three and a half hours on the record; right?

14 MR. PLESEC: Objection.

15 A. Right, not counting the breaks.

16 Q. Right. And we took frequent breaks; correct?

17 A. Thank you very much. Yes.

18 Q. Now I believe you agreed with me earlier that a
19 company such as R. J. Reynolds has a duty to
20 understand any dangers associated with its products;
21 correct?

22 MR. PLESEC: Objection.

23 A. Understand, yes.

24 Q. And in order to do that, they need to collect
25 and monitor the literature; correct?

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1 A. That is correct. Yes.

2 Q. They need to have people such as yourself

3 analyze that literature; correct?

4 A. Correct.

5 Q. And that's a duty the company has in order to

6 adequately warn the public of any dangers associated

7 with its products; correct?

8 MR. PLESEC: Objection.

9 A. I would say inform.

10 Q. Right. And you would also agree with me, would

11 you not, that when you conducted your analyses of

12 this literature after 1964, that your analysis was

13 really done for the entire company of R. J. Reynolds,

14 not just the lawyers; correct?

15 MR. PLESEC: Objection.

16 A. It was channeled through the lawyers. The

17 smoking and health analysis was channeled through the

18 lawyers mostly.

19 Q. Okay. It was channeled through the lawyers, but

20 your analysis was widely available to management and

21 research scientists; --

22 A. Correct.

23 Q. -- correct?

24 MR. PLESEC: Objection.

25 Q. Correct?

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1 A. Correct, yes.

2 Q. So in other words, even though you channeled
3 your research through the lawyers, that -- that
4 analysis of research that you did was widely
5 available to the other scientists in R. J. Reynolds;
6 correct?

7 MR. PLESEC: Objection.

8 A. Yes.

9 Q. It was available to the public affairs
10 department; correct?

11 MR. PLESEC: Objection.

12 A. Yes.

13 Q. It was available to the public relations
14 department; correct?

15 MR. PLESEC: Objection.

16 A. Yes.

17 Q. And it was available to top management;
18 correct?

19 MR. PLESEC: Objection.

20 A. Yes.

21 Q. And the same was true for Dr. Rodgman's analysis
22 of the literature when he did it; correct?

23 MR. PLESEC: Objection.

24 A. Yes.

25 Q. So in other words, the lawyers weren't the sole

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1 recipients of the research, they were simply the
2 means by which the company channeled this research
3 throughout the corporation; correct?

4 MR. PLESEC: Objection.

5 A. What -- what also would be sent from the
6 outside, by the management or by public relations.

7 Q. Right. So the lawyers basically were used to
8 funnel and shield this analysis you did of the
9 research, but it was widely spread throughout the
10 company; correct?

11 MR. PLESEC: Objection, mischaracterization
12 of the evidence.

13 A. I wouldn't -- I don't --

14 I think I don't like the -- the term "shield."
15 It was just simply a distribution system.

16 Q. Okay.

17 A. "Shield" implies something which I don't think
18 is correct.

19 Q. Okay. So it was a distribution system that
20 started with the lawyers but eventually went
21 throughout the company.

22 MR. PLESEC: Objection.

23 A. Was available. Was also of interest, yes.

24 Q. And that just makes sense because, for instance,
25 your research scientists don't have the opportunity

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1 to read every article you read; correct?

2 A. Of course.

3 Q. And so they needed your analysis of that

4 literature available to them; right?

5 MR. PLESEC: Objection.

6 A. Either analysis or just simply communication of

7 its existence.

8 Q. Right. And same would be true for public

9 affairs; correct?

10 MR. PLESEC: Objection.

11 A. It was available to them, yes.

12 Q. Okay. Do you know how long R. J. Reynolds had

13 been making cigarettes prior to the time you arrived?

14 A. They started at the time -- if I recollect

15 correctly -- before World War I.

16 Q. Okay. So by the time you arrived at R. J.

17 Reynolds, they'd been making cigarettes for at least

18 30 years; correct?

19 A. That is correct.

20 Q. Yet they basically knew nothing about their

21 product from a scientific standpoint; correct?

22 MR. PLESEC: Objection.

23 A. Neither did anybody else.

24 Q. So the entire industry was negligent in not

25 understanding anything about their own product;

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1 correct?

2 MR. PLESEC: Objection.

3 A. So was the medical profession.

4 Q. Okay. But in 1951, you came and started with
5 basically nothing; correct?

6 MR. PLESEC: Objection.

7 A. As far as Reynolds' facilities were concerned,
8 yes.

9 (Discussion off the stenographic record.)

10 Q. Okay. And you came in and you -- and you were
11 given the assignment to build a state-of-the-art
12 industrial library; correct?

13 A. Correct.

14 Q. You came up here to New York; correct?

15 A. From the point of view of acquisitioning
16 periodicals and books, yes.

17 Q. And of the office you're referring to was
18 actually in the Esty Advertising Agency; correct?

19 A. That's because that way was -- facility was
20 available, yes.

21 Q. And was Esty one of the advertising agencies
22 that R. J. Reynolds used?

23 A. Yes. Because the --

24 Because they had the coincidence of being
25 located where I would have opportunities to go to

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1 dealers, book dealers and dealers of periodicals and
2 so forth. It just happened to be a coincidence. And
3 I also had facilities at the New York Public Library,
4 which was two blocks from Esty. That was the main
5 reason I was located at William Esty, was because at
6 that particular time the best information to us in
7 the New York area or in the United States was the New
8 York Public Library, and that wasn't two blocks of
9 William Esty, and that is the reason I took up at
10 William Esty. If William Esty was actually located
11 at 51st Street, I wouldn't have had my offices there.
12 To repeat, it was the neighborhood of the public
13 library which made -- was a fortunate coincidence,
14 made it easy to me to go every day to the New York
15 Public Library, because that was the most
16 technologically advanced source of information for --
17 for information.

18 Q. Were you aware that in the early '50s and the
19 late '40s, that manufacturers such as Reynolds made
20 certain representations about their cigarettes, such
21 as -- I seem to recall that Camel said something
22 about either being recommended by doctors or good for
23 your throat. Do you remember that?

24 MR. PLESEC: Objection.

25 A. There was advertizing to that effect, yes.

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1 Q. The fact of the matter is R. J. Reynolds had
2 absolutely no research in its possession at the time
3 it made those claims to support those claims;
4 correct?

5 MR. PLESEC: Objection.

6 A. Neither did any other tobacco company, neither
7 that of any substantial volume of knowledge and
8 information as far as the medical profession was
9 concerned, specifically the medical profession of the
10 United States.

11 Q. So any -- any tobacco company that made any kind
12 of a health claim prior to 1954 would basically be
13 lying to the public; correct?

14 MR. PLESEC: Objection.

15 A. The same applied to all other industries, yes.

16 Q. Now I believe you've testified that what you
17 built was one of the finest industrial lab --
18 libraries -- south of Washington; was it?

19 A. That is correct.

20 Q. So that when, in 1962, Dr. Rodgman concluded
21 that the amount of evidence accumulated to indict
22 cigarette smoke as a health hazard is overwhelming
23 while the evidence challenging this indictment is
24 scant, he had available and made his conclusions
25 based on one of the best libraries in the South;

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1 correct?

2 MR. PLESEC: Objection.

3 A. Well he --

4 Before I set up the library, of course he
5 consulted the library of -- there was a medical
6 school in town and so forth, so he based himself on
7 information which he collected and interpreted either
8 from facilities in the community or facilities
9 elsewhere.

10 Q. In any of your --

11 In either event, Dr. Rodgman, when he made his
12 conclusions that the amount of evidence accumulated
13 to indict cigarette smoking as a health hazard is
14 overwhelming, in 1962, that was a well-informed
15 decision on his part; correct?

16 MR. PLESEC: Objection.

17 A. It was a decision on his part. I would not use
18 the adjective.

19 Q. But he certainly had available the information
20 and all the published articles that he needed in
21 order to make that determination; correct?

22 MR. PLESEC: Objection.

23 A. I presume he did.

24 Q. Did you say "I presume he did?"

25 A. Yes.

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1 Q. And again, at your direction, R. J. Reynolds had
2 a system in place to basically collect all the work
3 done by its scientists and other individuals,
4 collect -- correct?

5 A. Not all --

6 MR. PLESEC: Objection.

7 A. -- the science, as much as possible of the
8 science, not all the science. As much as possible of
9 the science, not all of it. It would have been
10 impossible; you'd have to have a skyscraper in order
11 to have it all.

12 Q. But it was the policy of R. J. Reynolds to keep
13 as much of the work done by its scientists as
14 possible within its own files; correct?

15 MR. PLESEC: Objection.

16 A. Within reason, yes.

17 (Discussion off the stenographic record.)

18 MR. O'FALLON: I have no further
19 questions.

20 Would you like to read and sign this
21 deposition?

22 MR. PLESEC: We'll read and sign it.

23 MR. O'FALLON: Okay. I would make a
24 request that the reading and signing take place post
25 haste due to the trial date and the fact that this

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1 has been postponed for such a long time, so I would
2 ask that this deposition be reviewed and to us by no
3 later than, let's say, January the 3rd or 4th.

4 MR. PLESEC: We'll try and do it the first
5 week of January, yes.

6 MR. O'FALLON: Okay. Thank you very much.
7 Thank you, Dr. Colby, for your time.

8 THE WITNESS: Thank you.

9 THE REPORTER: Off the record, please.

10 (Deposition concluded at 11:56 o'clock
11 a.m.)

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1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify
3 that I am qualified as a verbatim shorthand reporter;
4 that I took in stenographic shorthand the testimony
5 of FRANK G. COLBY at the time and place aforesaid;
6 and that the foregoing transcript consisting of pages
7 179 through 252 is a true and correct, full and
8 complete transcription of said shorthand notes, to
9 the best of my ability.

10 Dated at New York, New York, this 18th day
11 of December, 1997.

12

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14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, FRANK G. COLBY, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 179 through 252, and that said
5 transcript is a true and correct, full and complete
6 transcription of my deposition except:

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15 FRANK G. COLBY

16 Deponent

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18 Sworn and subscribed to before me this day
19 of , 1997.

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23 Notary Public

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25 My commission expires .

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